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Dr. VP Rai
Assistant Professor, B.S.A.
Collage Mathura, Dr. BRA
University, Agra, Uttar
Pradesh, India

Right to compensatory remedy in India

Dr. VP Rai

Abstract

Compensation has been made one of the important modes of Remedies provided by the Court of Law against the executive atrocities or Lawlessness. Compensation simply means recompensation. It is monetary value and though not equal to the loss caused by the administrative actions, yet it presumed to be equal to the loss. Compensation is counterbalancing of the victim's sufferings and loss that results from victimization.

Keywords: Counterbalancing, Recompensation, Remedies, Atrocities

Introduction

Compensation' means a thing that compensates or is given to compensate (for); a counter balancing feature or factor, amends, recompense, specific money given to compensate loss or injury, or for requisitioned property. The right to compensation emerged in law mainly under commercial transactions, where there was any transaction related to any goods, in which party to the contract has imposed themselves with contractual obligations and where any party later made a breach, the remedy for other party was to approach to court for compensation for wrong or harm or loss caused due to such breach. With the development of human rights jurisprudence and concept of welfare state this right entered into the area of constitutional law and environmental law. Under criminal law, Compensation was present since time immemorial.

Our constitution contains all the basic human rights in the name of 'Fundamental Rights' and certain duties in the name of 'Fundamental Duties' which are available to its people.

Review of Literature

In the 9th century however the concept of compensation to the victim of crime was sought to be revived by eminent criminologists like Garofale and Ferry and bentham in England Under the influence of their theories an system of compensation was evolved whereby the victim had to be paid out of the fines imposed on the offender, the states also had accepted the responsibility of paying compensation in varying degrees. Thus in 1926 Sweden introduced a system in which victims were paid compensation out of the fine imposed on the offenders; some concrete progress was made in Europe, U.S.A. and some other countries commencing from early Sixties the scheme to pay the victims out of public funds were introduced in the southern and western countries of Europe, Canada, Australia, New Zealand and Switzerland. The 'Anglo-Saxaons first systematically used monetary payments in the form of damages or compensation to the victims of wrongs. Monetary compensation replaced the long standing tradition of self-help justice that allowed the victims to retaliate directly against those who wronged them often with bloody and disruptive consequences.

Right to Compensation after Commencement of Constitution

The reason for inclusion of fundamental rights and Directive Principles of state Policy was to meet out the instant need of social justice. Fundamental rights are those minimum basic rights which are necessary for the full fledged development of the people. Directive principles are those principles, which is fundamental for the governance of the country.

All fundamental rights are meaningless and only of symbolic importance unless there is some sort of affirmative remedy for the gross violation of these rights. A right without remedy is like a teeth less snake. So incorporation of articles 32 and 226 has some specific purpose. In case of violation of any provision of fundamental rights, these articles can be invoked to check such violation.

Correspondence
Dr. VP Rai
Assistant Professor, B.S.A.
Collage Mathura, Dr. BRA
University, Agra, Uttar
Pradesh, India

After going through the nature, scope, constitutional assembly debates and the general and judicial meaning of article 32, it may be submitted that the apex court of India has given its meaning so wide to meet out the real justice rather than technical justice.

Indian penal code and compensation

Indian penal code also provides for payment of compensation to the victim of a crime for any 'loss of injury' - physical, mental, or psychological caused to him by the offender. The Law Commission of India felt it 'Unwise to create a legal right in favour of the victim to join in the criminal proceedings as a third party to avoid mixing up of civil and criminal proceedings, a confusion of issues and Prolongation of the trial. It favoured payment of compensation out of fine imposed on the offender. Whenever a person is convicted of an offence punishable under chapter XVI, XVII or XXI of this code or of an abetment of such offence or of a criminal conspiracy to commit such offence and is sentenced to fine, whether with or without impulsion meant, and the court as of opinion that compensation is recoverable by civil suit by any person for loss or injury caused to him by that offence, it shall be competent to the court to direct by the sentence that the whole or any part of the fine realized from the offender shall be paid by way of compensation to such person for the said loss or injury and expenses properly incurred by such person in the prosecution of the case shall be deemed part of the loss caused to him by the offender.

Concept of sovereign immunity

The concept of sovereign immunity has been imported in India through English common law, which immunized the crown from the jurisdiction of courts following the famous old doctrine 'king can do no wrong'. However, this sovereign immunity came to an end by the passing of Crown Proceedings Act, 1947. The modern trend in England is to enlarge liability of the crown. Such statute was not extended in India. Article 300 of the Indian Constitution says that the government of a State may sue or be sued by the name of that state. The constitution does not directly tell the extent of the liability in the matters of tortious actions of government employees.

Illegal detention

Its the worst form of act done by the law enforcement agency (i.e. Police) in the name of maintenance of law and order. The normal preventive detention power conferred on police is after misused, resulted in the increasing number of cases of illegal detention. India courts have taken this attitude of police seriously and in a number of cases, it has not only prosecuted and punished the erring behaviour of police but also awarded the victims compensation. The list of cases given below supported this view of Indian judiciary.

The writ of habeas corpus can be invoked not only against the State but also against any individual who is holding any person in unlawful custody of detention. It is the duty of police in such circumstances to make necessary efforts to see that detainee is got released. Therefore, in spite of such efforts, if a person is not found, police cannot be put under undue pressure to do something impossible.

Custodial Death

Custodial Death means death in police lock up/Custody in prison. It can be caused in many ways, for example, by using third degree method or torture by police or prison, authority; by negligence of prison authority in giving medical treatment to prisoner; by not making proper case/arrangements in jail etc.

The previous right guaranteed by Article 21 cannot be denied to convicts, under trials or other prisoners in custody except according to procedure established by law. There is a great responsibility in a public or prison authorities to ensure that the citizen in custody is not deprived of his right to life. This liberty is in the very nature of things circumscribed by the very fact of his contravention, the duty of care of prisoners on the state is strict and admits of no exceptions. The wrongdoer is accountable and the state is responsible in case of custodial death.

Encounter Death

Encounter death is one of the practical mode adopted by the police to remove the hardened criminals from society but due to misuse of power by police authority there have been fake encounter and which compelled the courts to interfere in these incidents and award compensation to the family of deceased.

In P.U.C.L. Vs. Union of India there was an allegation of fake encounter of two persons by the Imphal police. The district & session judge made an inquiry on the direction of the Supreme Court and found that there was no encounter but the two persons were killed in police custody. The Apex Court ordered rupees one lakh be paid to the families of each of the deceased. The court held that encounter are not permissible under the law. Use of force by police is justified only in self-defense. But police authorities use encounter as a practical mode to eliminate criminals from society. It is extra judicial death and violation of Article 21.

Conclusion

For the question of assessment of the compensation payable to the petitioner the Supreme Court has stated that loss of human life can never be compensated in money value nor the loss of the son to his father and the mental agony undergone by the father also cannot be assessed in money value. However, considering the undisputed averments made in the writ petition that the petitioner appeared in the H.S.C. examination and after examination was over, he was working at Konark Medical Store on a Monthly salary of Rs. 2000/- since one month before his death and taking into consideration the irreparable loss sustained by the petitioner due to the sudden accidental death of his son, the Court was of the view that it would be fair and equitable if the petitioner was granted a compensation of Rs. 1.50 lakh with interest at the rate of 6% per annum from the date of filing of the writ petition. The assessment of damages in cases of personal injuries is a on doctrine of difficult task which has to be performed and there is precedent in fixing the quantum of damages. The proper assessment of damages it's a question which will depend on the facts of each case and no hard and fast rule can be laid down. There is no omniscient criteria capable of solving all problems at all time arising in the law of damages.

At the end of the day, arithmetic may have to be mitigated by common sense. However, compensation awarded must be fair and just.

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